



FRANCHISE AND PERSONAL INCOME TAX APPEALS

If you disagree with a Franchise Tax Board decision about your liability for franchise or personal income taxes, or about your eligibility for a refund, you can usually appeal that decision to the Board of Equalization (the Board). The five elected Board Members serve as the appellate body in final actions of the Franchise Tax Board, issuing opinions and rendering decisions interpreting and defining California's income tax laws. This pamphlet describes the main steps to follow in the appeal process. If you need additional help, please contact the Board of Equalization (please see page 8).

Basic Considerations for Filing an Appeal

To have your appeal considered, you must:

- File the appeal within the specified time limits and in the proper manner
- Provide written information about your case, the points at issue, and your analysis as to the proper application of the law

Once the Board has received your information and the Franchise Tax Board's responses, the Members will evaluate your case and render an impartial decision. If you disagree with the Board's decision, you can arrange for further consideration through filing an action in superior court.


Points to Remember

If you choose to file an appeal, it is important to remember that:

- You may reverse your decision to appeal. At any time during the appeals process, you may agree to a settlement with the Franchise Tax Board or you may submit a written request for dismissal of your appeal for other reasons.
- Any evidence previously submitted to the Franchise Tax Board will not be available to the Board of Equalization unless it is also submitted to the Board during the appeal process.
- Any information you submit to the Board must be in writing. With the exception of oral testimony given at a public hearing, the Board of Equalization cannot accept any information presented orally, such as during a telephone call.
- All information in the appeal you file is public.
- If a Franchise Tax Board decision affects more than one person, each person affected must file an appeal on his or her own behalf. For example, if your appeal involves a joint assessment on a joint return, both you and your spouse must sign the appeal. The fact that you filed an appeal does not protect your spouse's rights with the Board. Your spouse must also sign the appeal, or file a separate one.
- At any time, you may pay the full assessment of tax, penalty and interest to stop the accrual of interest, which compounds daily during the appeal process. You will receive a refund of your payment, plus interest, if your appeal is successful. Please contact the Franchise Tax Board if you wish to make a full payment (see address on page 8).

Contents. . .

Basic Considerations for

 Filing an Appeal 1

Filing the Appeal 2

Form of the Appeal 2

Processing the Appeal 3

The Briefing Process 3

Deferring an Appeal 5

The Board Hearing 6

The Board Determination 6

Further Appeal Rights 7

Agency Addresses 8

January 1996

Pamphlet No. 81

LDA

BOARD MEMBERS

BURTON W. OLIVER
Executive Director

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
State Controller, Sacramento

You may file an appeal with the Board of Equalization only after you have exhausted your review rights with the Franchise Tax Board.

The following sections discuss the Board of Equalization appeals process in more detail.

Filing the Appeal

When You Can Appeal

You or your representative may file an appeal with the Board of Equalization only after you have exhausted all of your review rights with the Franchise Tax Board. You will know that you have exhausted these rights when the Franchise Tax Board issues you a:

- *Notice of Action on Taxpayer's Protest* against a tax assessment
- *Notice of Action on Cancellation, Credit, or Refund* on a claim for a tax refund

You may also file an appeal if you have filed a claim for refund with the Franchise Tax Board and it has not acted on your claim within 6 months of the filing date.

Time Limits for Filing an Appeal

You must file your appeal within 30 days from the date of the *Notice of Action on Taxpayers's Protest* and within 90 days from the date of the *Notice of Action on Cancellation, Credit, or Refund*.

The law does not specify a time limit for filing an appeal following the Franchise Tax Board's failure to act on your claim for refund. However, if you receive a *Notice of Action on Cancellation, Credit, or Refund* on your claim before you file such an appeal, the 90-day limit would then apply.

These time limits are defined by law and no extensions can be granted. If you miss the due date for filing an appeal on a tax liability, your only recourse would be to pay the liability and file a claim for refund with the Franchise Tax Board. If you were already appealing a denial of a claim for refund, your only recourse would be to file an action against the Franchise Tax Board in superior court.

For more information on filing such an action, see page 8.

Generally, the *postmark* date on your appeal is considered to be the filing date. If the last day to file an appeal falls on a Saturday, Sunday, or holiday, the filing deadline is extended to the next business day.

Appealing More Than One Notice

If you receive *Notices* for several tax years, your appeal must refer to each *Notice* with which you disagree. If the issues that form the basis for your disagreement are the same for more than one appeal, your separate appeals may be consolidated into one.

Form of the Appeal

Information Required

To file an appeal, you must write to the Board of Equalization and provide the following information:

- Your name and address, or, if you are filing for a corporation, the corporation's name and address.
- Your Social Security number, or, if you are filing for a corporation, the corporation number.
- The amount of tax and the tax year(s) involved in the appeal. (If you agree that you owe any portion of the tax, please include specific information.)
- The date of the *Notice* you are appealing.
- A statement of the facts involved in the case.
- The legal points and authorities, including statutes and regulations, supporting your position.
- Your daytime telephone number or that of your authorized representative.

Your appeal must be signed by you or your authorized representative.

Please note: Filing a complete appeal letter can expedite the appeal process.

You should also enclose a copy of the *Notice* you are appealing and any documents that support your position.

Submitting Your Appeal

You must mail or hand-deliver two copies of the letter, the *Notice*, and any supporting documents, to:

Board Proceedings Division
State Board of Equalization
450 N Street, MIC 81
P.O. Box 942879
Sacramento, CA 94279-0081

One copy of your appeal letter and supporting documents will be forwarded to the Franchise Tax Board.

Processing the Appeal

The Board of Equalization will send you a letter confirming its receipt of your appeal letter. Meanwhile, the Board (after contacting the Franchise Tax Board) will determine whether it has jurisdiction in your case.

Once the Board of Equalization has verified its jurisdiction, it will send you an acknowledgment letter confirming your status as an appellant. A copy of the letter will also be sent to the Franchise Tax Board.

If the Board does not have jurisdiction, it will send you a letter explaining why and informing you of possible alternatives. The Board will not have jurisdiction if you filed after the time limits stated on the *Notice of Action* you received from the Franchise Tax Board. The Board may also lack jurisdiction if the only disputed issue is unpaid interest.

In addition, the Board will lack jurisdiction in situations where your appeal is considered to be premature. Your appeal is premature if:

- Your protest is still pending at the Franchise Tax Board; or

- Your claim for refund is still pending and less than six months have elapsed since it was filed.

The Briefing Process

Information Gathering

After it has acknowledged you as an appellant, the Board of Equalization begins its information-gathering ("briefing") process. This process is a crucial step in your appeal since it is the *only* method by which the Board of Equalization can obtain information about your case. Consequently, any briefs you file must be as complete as possible. However, they may not exceed 30 (typed/handwritten) double-spaced, one-sided, 8½-inch by 11-inch pages, excluding exhibits.

You may submit briefs in a form as simple as a letter. They must address the facts and the points at issue in your case and state your position as to the correct application of the law. If possible, they should also cite those sections of the law or those judicial decisions that support your position. You or your authorized representative must sign them.

In addition to the briefs, the Board of Equalization may require you and the Franchise Tax Board to stipulate to those facts about which both parties agree, those facts that are in dispute, and the reasons for the dispute.

Except for your original appeal letter, you must send to the Franchise Tax Board a copy of any briefs or correspondence you send to the Board of Equalization. Similarly, you will be sent copies of any briefs or correspondence the Franchise Tax Board submits to the Board of Equalization.

The Briefing Process

To limit the time it takes to complete this information-gathering step, Board of Equalization regulations define a specific briefing process. Under this pro-

*Filing a complete
appeal letter
can expedite the
appeal process.*

*You may reverse
your decision to
appeal at any time
during the appeal
process.*

cess, there is a set amount of time for the filing of briefs and responses to them. Normal briefing involves giving you, when necessary, 90 days to supplement your appeal. The Franchise Tax Board then has 90 days to file an initial brief. Finally, you have an additional 30 days to file a reply brief. These steps are discussed in more detail below and shown in the table on the opposite page. You will receive specific deadline information at each step in the briefing process.

Required Sequence

The initial briefing sequence will depend on the completeness of your appeal letter. If the information contained in your original letter is adequate, the Franchise Tax Board will be asked to submit an initial brief within 90 days (see table). If your appeal is incomplete, you will be given 90 days to provide supplemental information. When the Board determines that your appeal is complete, the Franchise Tax Board will be given 90 days to submit an initial brief.

Please Note: *If you fail to supplement your original appeal with additional information when asked to do so, **your appeal may be dismissed.** If you or the Franchise Tax Board miss any other response deadline without obtaining an extension, the briefing process will stop. Your appeal will then enter the next stage of the appeal process.*

After the Franchise Tax Board files its initial brief, the Board of Equalization will send you a letter informing you that you have 30 days to file a reply (see table).

This letter will also ask you to indicate whether you wish to:

- Have your case decided by the Members without an appearance;
- Appear before the Members of the Board of Equalization and present your case; or

- Have your appeal dismissed.

Your written reply should address only those points of disagreement you have with the Franchise Tax Board's brief. You must send your reply brief to the Board of Equalization and a copy to the Franchise Tax Board.

It is important that you file this brief within the 30-day deadline. Failure to meet the deadline will bring the briefing process to an end.

Filing of your reply brief normally ends the briefing process.

Steps Allowed at Board Discretion

In extraordinary situations, the Franchise Tax Board may be given 30 days to file a supplemental brief in response to your reply brief. The Franchise Tax Board will send a copy to you.

If the Franchise Tax Board files a supplemental brief, you will have the option to file a response brief within 30 days. Your response will be the final brief in the briefing process.

Schedule Changes and Extensions

At the Board's discretion, changes to the briefing schedule can be made in two situations:

- If there is a showing of extreme hardship; or
- If both you and the Franchise Tax Board agree to an extension.

To seek the Franchise Tax Board's agreement for an extension prior to the due date, you should write to the attorney whose name and address appear on the Franchise Tax Board brief, and send a copy of your letter to the Board. You should contact the Franchise Tax Board attorney as early as possible before the due date you wish to extend.

All requests for changes or extensions must be in writing and must be filed with the Board of Equalization before the due date of the brief.

BRIEFING STEPS AND RESPONSE DEADLINES	
<i>Typical steps after you file your appeal¹</i>	<i>Response deadline</i>
When your appeal is considered complete, the Board notifies you and FTB in writing. If necessary, the Board asks you to submit supplemental information before this determination is made.	<i>If supplemental information is required — 90 days from the date of the Board's letter requesting supplemental information.²</i>
FTB submits initial brief responding to your appeal.	90 days from the date of the Board's letter acknowledging that your appeal is complete.
You file reply brief responding to FTB's initial brief.	30 days from the date of the Board's letter to the FTB acknowledging receipt of FTB initial brief.
Briefing process normally ends.	
<i>Steps allowed at Board's discretion</i>	<i>Response deadline</i>
With the Board's permission, FTB files a supplemental brief responding to your reply brief.	30 days from the Board's letter to FTB granting permission to file.
You file response brief (optional).	30 days from the Board's letter acknowledging receipt of FTB supplemental brief.
Briefing process ends.	
¹ If you or the Franchise Tax Board miss a response deadline without first obtaining an extension, the briefing process will generally stop (<i>see note below</i>). Your appeal will then enter the next stage of the appeal process. ² If you are asked to provide supplemental information and do not provide it within the period allowed, <i>your appeal may be dismissed</i> .	

Deferring an Appeal

You or the Franchise Tax Board can request a deferral of the appeal process if there is sufficient cause and if both parties agree. (Under certain circumstances, the Board may grant a deferral requested by only one party.) Deferrals may be granted because:

- You are negotiating with the Franchise Tax Board for the purpose of reaching a settlement.

- You or the Franchise Tax Board are waiting for a pending court, Board of Equalization, or Internal Revenue Service decision that is based on the same points of law at issue in your case.
- You are filing for bankruptcy.

The party or parties seeking the deferral must submit a written request to the Board of Equalization.

*All Board of
Equalization
determinations in
Franchise and
Income Tax
hearings are made
during public
meetings by a
voice vote.*

The Board Hearing

Your Options

If you still want the Board of Equalization to decide your case after finishing the briefing process, you have the option of:

- Having the Board Members decide your case based solely on the information submitted during the briefing process.
- Requesting a hearing where you or your representative will be given an opportunity to present your case before the Board Members. Hearings are usually held in Sacramento and in the Los Angeles area. You will be notified of the hearing location approximately 60 days before the hearing date.

You Have the Burden of Proof

It is important to remember that you generally have the burden of proving any disputed facts. The Board hearing gives you an opportunity to summarize and emphasize those points you feel support your position. You should make every effort to ensure that your presentation is clear and concise and your evidence is complete.

If there are facts in dispute in your case, you may wish to have witnesses testify or present written statements on your behalf. Witnesses should not be used to simply restate information contained in the briefs you submitted in the briefing process. If you plan to have witnesses testify, you should inform the Board, so that adequate time can be scheduled for your hearing (see **Note**, next column). You should also indicate the nature of the testimony that will be given. The rules of evidence that apply to tax appeal hearings are detailed in section 5079 of Title 18 of the California Code of Regulations. You may request a copy

of this section from the Board.

Note: Prior to the hearing, the Board will allocate a specific amount of hearing time for each party, including time for response and questions by the Board Members. You and the Franchise Tax Board will be sent advance written notice of the time allocations, and will be expected to adhere to them during the hearing.

The Hearing

A hearing generally progresses as follows:

- At the start of a hearing, a member of the Board of Equalization legal staff will introduce the parties and summarize the issues.
- You or your representative will then be given an opportunity to state your position and present your evidence.
- After your presentation, the Franchise Tax Board will state its position and present its evidence.
- You will then be given an opportunity to reply to the Franchise Tax Board's presentation.
- Finally, the Board Members may ask each party questions about the appeal.

The Board Determination

All Board of Equalization determinations in Franchise and Income Tax cases are made during public meetings. The point at which the Board Members may decide a case will vary.

Unless you request a hearing, all related briefs received by the Board of Equalization are forwarded to its Legal Division, which prepares a suggested opinion or summary decision for consideration and adoption by the Board Members.

Where a Board hearing is held, Members may do one of the following:

- Order the matter to be taken under submission;
- Decide your case at the conclusion of the hearing day; or
- Order the matter to be taken under submission, but postpone the decision, so that you or the Franchise Tax Board can present more information for consideration.

If the matter is taken under submission, the case is forwarded to the Legal Division, which prepares a suggested opinion or summary decision for consideration and adoption by the Board Members.

Generally, cases that are taken under submission by the Board Members, and those for which you have waived a hearing, are put on a nonappearance agenda and voted on during a regularly scheduled public meeting. If your case is on the nonappearance agenda, you normally will *not* be informed of the date it is being considered by the Board Members.

Once the Board Members make their determination, however, you will be immediately informed by mail. The Board will send you a copy of the adopted opinion or decision and a cover letter stating the date on which the Board Members decided your case. A copy of this information will also be sent to the Franchise Tax Board.

Unless a petition for rehearing is filed, the Board Members' decision will become final after 30 days. When a determination becomes final, the Franchise Tax Board will issue an adjustment billing or refund.

Please Note: An *opinion*, if adopted by the Board Members, can be used as a precedent for other tax cases. In contrast, a *summary decision* is applicable only

to the case under consideration and may not be cited as precedent.

Further Appeal Rights

If you agree with the decision made by the Members of the Board of Equalization, no further action is required on your part.

If you disagree with the decision by the Board Members and wish to continue your appeal, you have two further appeal options. You may file a petition for rehearing with the Board, or file an action in superior court, as explained below.

Petition for Rehearing

If you disagree with the decision, you may file a petition for a rehearing within 30 days of the date of the Board decision. The Franchise Tax Board has the same right to file a petition for rehearing. In your petition for rehearing, you should state any new facts or points of law applicable to your case, and indicate how they would affect the outcome of your appeal. You should mail a copy of your petition to the Franchise Tax Board, which may be given an opportunity to reply.

Please Note: A rehearing is normally granted only in those cases:

- Where newly discovered facts are presented, if those facts could not reasonably have been discovered before;
- Where there is a change in the law; or
- Where the Board has substantial reason to believe it was wrong in its original application of the law.

The Board Members will decide on your petition during a regularly scheduled meeting. If they grant a rehearing, you will be informed and given an opportunity to again appear before the Board Members. If the Members

*Unless a petition
for rehearing is
filed, Board of
Equalization
decisions become
final after 30 days.*

deny your petition, the decision becomes final 30 days after the date the petition is denied.

Filing An Action in the Superior Court

If you disagree with the Board's determination, a further remedy is available in the form of filing an action against the Franchise Tax Board in the superior court. For more information about such actions and how to file them, you should refer to the Revenue and Taxation Code or contact your private attorney, the legal staff of the Franchise Tax Board, or the legal staff of the Board of Equalization.

NOTE: The statements in this pamphlet are general and are current as of the date on the cover. The Revenue and Taxation Code and applicable regulations are complex and subject to change. If there is a conflict between the law and this pamphlet, any decisions will be based on the law and not this publication.

**Addresses for Franchise and
Personal Income Tax Appeals**

Please file your appeal and briefs with

State Board of Equalization

Board Proceedings Division
State Board of Equalization
450 N Street MIC 81
P.O. Box 942879
Sacramento, CA 94279-0081
916-445-7086

Send copies of your briefs to

Franchise Tax Board

Franchise Tax Board
Legal Division
P.O. Box 1720
Rancho Cordova, CA 95741-1720
916-845-3364

Send brief filing deadline extension requests to the attorney whose name, address, and telephone number are on the FTB briefs.

**Your Taxpayers' Rights
Advocate**

The State Board of Equalization wants to make dealing with us as easy as possible. Consequently, we have appointed a Taxpayers' Rights Advocate to help you with problems you cannot resolve at other levels.

You can contact the Taxpayers' Rights Advocate at

Taxpayers' Rights Advocate Office
State Board of Equalization
450 N Street, MIC 70
P.O. Box 942879
Sacramento, CA 94279-0070
916-324-2798 phone
916-323-3319 fax